

# FINAL BILL REPORT

## ESHB 1138

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C 438 L 09  
Synopsis as Enacted

**Brief Description:** Concerning access to employee restrooms in retail stores.

**Sponsors:** House Committee on Judiciary (originally sponsored by Representatives Liias, Clibborn, Moeller, Green, Cody, Driscoll, Morrell and Pedersen).

**House Committee on Judiciary**  
**Senate Committee on Judiciary**

### **Background:**

Inflammatory bowel disease (IBD) encompasses a group of conditions of the small and large intestine. The two main categories of IBD are ulcerative colitis and Crohn's disease, both of which typically cause patients to experience diarrhea and abdominal pain, among other symptoms. There is no known cure for IBD. Although a person with IBD may achieve remission through treatment, he or she will likely experience the occasional, acute resurgence of the original symptoms. When a person suffers a resurgence episode, he or she will often require the use of a restroom in order to alleviate his or her discomfort.

Severe IBD may require surgery, including a temporary or permanent colostomy or ileostomy. An ostomy refers to a surgically created opening in the body for the discharge of body wastes. An ostomy device is a receptacle used to collect the diverted waste.

Under public accommodation laws, a retail establishment is not explicitly required to allow a customer access to a non-public restroom. The Human Rights Commission has adopted rules prohibiting a person in the operation of a place of public accommodation from failing to reasonably accommodate the known physical, sensory, or mental limitations of a disabled person, when ordinary service would prevent the person from fully enjoying the place of public accommodation. Whether an accommodation is "reasonable" is determined on a case-by-case basis. Thus, depending on the unique context of a contemplated retail establishment, it may or may not be reasonable for that establishment to provide safe access to an employee restroom.

### **Summary:**

Customer Access to Employee Restroom Facilities.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

A retail establishment with a restroom facility for its employees must allow a customer with an "eligible medical condition" to use the facility during normal business hours if the customer provides written evidence of having an eligible medical condition and either: (1) the employee restroom is reasonably safe and is not located in an area where providing access would create an obvious health or safety risk to the customer; or (2) allowing the customer access does not pose a security risk to the retail establishment or its employees. In addition, a retail establishment must allow *any* customer to use an employee restroom if three or more employees are working at the time the customer requests access to the restroom and either the employee restroom is reasonably safe for the customer or the customer's access to the restroom does pose a security risk to the establishment or its employees.

A retail establishment is not required to make any physical changes to an employee restroom and may require that an employee accompany the customer to the restroom. "Retail establishment" means a place of business open to the general public for the sale of goods or services. It does not include a structure of 800 square-feet or less.

An "eligible medical condition" means Crohn's disease, ulcerative colitis, any other IBD, irritable bowel syndrome, any condition requiring the use of an ostomy device, or any other permanent or temporary medical condition that requires immediate access to a restroom facility.

Written evidence of an eligible medical condition or device must be either: (1) in the form of a signed statement by the customer's health care provider on a form prepared by the Department of Health (DOH); or (2) an identification card issued by a nonprofit organization whose purpose includes serving persons suffering from the medical condition or using an ostomy device. The DOH is required to develop the standard electronic form but is not required to distribute printed versions of the form. It is a misdemeanor to fraudulently use a form as evidence of an eligible medical condition.

#### Violations.

For a first violation, the city or county attorney will issue a warning letter to a retail establishment and any employee who denies access to an employee restroom in violation of the requirements. For a subsequent violation, the retail establishment or employee is guilty of a civil infraction not to exceed \$100.

#### Qualified Immunity.

A retail establishment or an employee is not civilly liable for any act or omission where a customer has been permitted to use a restroom that is ordinarily reserved for employees if the act or omission meets all of the following:

- It is not willful or grossly negligent.
- It occurs in an area of the retail establishment that is not accessible to the public.
- It results in an injury to or death of the customer or any individual other than an employee accompanying the customer.

#### **Votes on Final Passage:**

House	90	7	
Senate	41	6	(Senate amended)
Senate	33	12	(Senate amended)
House	93	0	(House concurred)

**Effective:** July 26, 2009